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28 Attorneys for Plaintiff Gor Gevorkyan

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 Gor Gevorkyan, on behalf of himself and all
21 others similarly situated,

22 Plaintiff,

23 vs.

24 Bitmain, Inc., Bitmain Technologies, Ltd.,
25 and DOES 1 to 10,

26 Defendants.

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Technologies, Ltd.

Case Number: 3:18-cv-07004-JD

CLASS ACTION

[HON. JAMES DONATO]

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: December 19, 2019
Time: 10:00 a.m.
Ctrm: 11, 19th Floor

Pursuant to Federal Rules of Civil Procedure 16(b), Local Civil Rule 16-9, and the Standing Order for All Judges of the Northern District of California, Plaintiff Gor Gevorkyan (“Plaintiff”) and Defendant Bitmain Technologies, Ltd. (“Defendant” or “Bitmain”) (and collectively the “Parties”) hereby respectfully submit the following Joint Case Management Conference Statement (“CMC Statement”) following telephonic meet and confers, which occurred on November 27 and December 2, 2019. To the extent the Parties do not agree on certain issues discussed herein, their positions on such issues are stated below.

I. JURISDICTION AND SERVICE

The Court has subject matter over Plaintiff’s claims pursuant to 28 U.S.C. § 1332(d). Defendant has been served with the operative complaint and has filed a motion to dismiss for lack of personal jurisdiction. (Dkt. No. 33.) No parties remain to be served.

II. FACTS

A. Plaintiff’s Summary of Facts and Issues in Dispute

This prospective consumer class action arises out of Defendants’ sale of Application Specific Integrated Circuit Devices (ASIC Devices) used to mine cryptocurrency to customers in California. Defendants’ alleged practices include: (1) Defendants’ “secret mining” practices or the use of customers’ ASIC devices after purchase and before delivery by Defendants to customers, causing wear and tear on the devices and contributing to the increased difficulty of mining cryptocurrency by the time the ASIC devices are delivered to customers; and (2) Defendants’ use of the products after delivery to customers by preconfiguring the devices to mine cryptocurrency for the benefit of Defendants rather than customers who purchased the devices (collective, “the Alleged Practices”).

Disputed issues of fact include: (1) Whether and to what extent Defendants engaged in the Alleged Practices; (2) the nature and extent of Defendants’ contacts with California; and (3) the nature and extent of any damages.

1 **B. Defendant's Summary of Facts and Issues in Dispute**

2 Plaintiff's Amended Complaint asserts four causes of action against Bitmain for: (1)
3 violation of California's Unfair Competition Law; (2) conversion; (3) unjust enrichment; and (4)
4 trespass to chattels. (Dkt. No. 32.) Bitmain maintains that none of these claims is viable, and
5 specifically denies Plaintiff's underlying factual allegations. As a threshold matter, however,
6 Bitmain, a company based in Beijing, China that has no employees and no operations in
7 California, is not subject to this Court's personal jurisdiction. (*See* Dkt. Nos. 33, 38.) This issue
8 is dispositive of all of Plaintiff's claims and warrants dismissal of the action in its entirety. (*Id.*)

9 Accordingly, to avoid waiving its challenge to personal jurisdiction, *see Peterson v.*
10 *Highland Music, Inc.*, 140 F.3d 1313, 1317–18 (9th Cir. 1998) (noting that a personal
11 jurisdiction defense may be waived as a result of litigation conduct inconsistent with that
12 defense), Bitmain proposes that the Parties file a further case management statement no later
13 than twenty-one (21) days after the Court's ruling on Bitmain's pending motion to dismiss (if the
14 case is not dismissed) that shall provide a more comprehensive summary of facts and issues in
15 dispute.

16 **III. LEGAL ISSUES**

17 In the event the Court denies Defendant's pending motion to dismiss for lack of personal
18 jurisdiction, legal issues presented by this action will include but are not limited to: (1) Whether
19 Plaintiff is subject to mandatory pre-dispute arbitration; (2) Whether a class should be certified in
20 the action for any of the claims asserted in the Amended Complaint; and (3) Whether Plaintiff can
21 prevail on the claims asserted in his Amended Complaint: (a) violation of California's Unfair
22 Competition Law; (b) Conversion; (c) Unjust Enrichment, and (d) Trespass to Chattel (Dkt. No.
23 32).

24 **IV. MOTIONS**

25 Defendant Bitmain Technologies Ltd. filed its motion to dismiss Plaintiff's Amended
26 Complaint for lack of personal jurisdiction on October 1, 2019. (Dkt. No. 33.) The motion has
27 been fully briefed and is scheduled for oral argument on December 19, 2019. In the event the

1 pending motion to dismiss is denied, Defendant anticipates filing a motion to compel arbitration,
 2 along with a motion for judgment on the pleadings for failure to state a claim and a motion to
 3 stay discovery pending resolution of those motions. Plaintiff will oppose any motion to compel
 4 arbitration or motion for judgment on the pleadings filed by Defendant.

5 In the event the pending motion to dismiss is denied in whole or in part, Plaintiff
 6 anticipates filing a Motion for Class Certification (“MFCC”), which Defendant will oppose.
 7 Each of the Parties anticipates filing motions for summary judgment following the close of
 8 discovery if warranted by the evidence.

9 **A. Plaintiff’s Proposed MFCC Deadlines**

10 Plaintiff proposes the following dates and deadlines in conjunction with the briefing on
 11 his anticipated MFCC:

EVENT	DEADLINE/DATE
Last day to file MFCC	12 months after the order on Defendant’s anticipated motion for judgment on the pleadings
Last day to file Opposition	45 days after filing of MFCC
Last day to file Reply	45 days after Opposition is due
Last day for Plaintiff to disclose experts in support of MFCC	At time Plaintiff’s MFCC is filed
Last day for Defendant to disclose experts in opposition to MFCC	At time Opposition to MFCC is filed

20 Plaintiff also proposes that experts offered in support of briefing on the MFCC shall be made
 21 available for deposition beginning no later than two (2) weeks after the filing of the MFCC and
 22 Opposition, respectively.

23 **B. Defendant’s Position on Proposed MFCC Deadlines**

24 As stated above, Defendant maintains that the Court lacks personal jurisdiction over it.
 25 (Dkt. Nos. 33, 38.) Accordingly, although Defendant agrees with some aspects of Plaintiff’s
 26 proposal, Defendant believes it would be premature to set a briefing schedule and deadlines
 27 related to a hypothetical motion for class certification. Defendant proposes that, if the Court
 28

were to deny Defendant's pending motion to dismiss for lack of personal jurisdiction, the Parties will submit a proposed briefing schedule for Plaintiff's anticipated motion for class certification no later than twenty-one (21) days after such ruling.

V. AMENDMENT OF PLEADINGS

The Parties do not anticipate amendments to the pleadings at this time but reserve their respective rights to seek leave to amend based on discovery in this action. The Parties agree to meet and confer to determine a deadline for amendment of Plaintiff's First Amended Complaint in the event that the Court denies Defendant's pending motion to dismiss for lack of personal jurisdiction.

VI. EVIDENCE PRESERVATION

The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines") and confirm that on November 27 and December 2, 2019, the Parties met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps to preserve evidence relevant to the issues reasonably evident in this action. The Parties agree to meet and confer on ESI issues as they arise, which may include entering into an ESI Protocol, if appropriate.

VII. DISCLOSURES

A. Plaintiff's Proposal for Initial Disclosures

Plaintiff proposes that the Parties exchange initial disclosures on or before January 2, 2020, in accordance with the requirements of Fed. R. Civ. P. 26(a)(1)(A).

B. Defendant's Proposal for Initial Disclosures

Defendant's position is that the Court lacks personal jurisdiction over it (*see* Dkt. Nos. 33, 38), and that exchanging initial disclosures could be construed as litigation conduct that waives Defendant's personal jurisdiction defense. *Peterson*, 140 F.3d at 1317–18. Although Plaintiff has agreed not to challenge Defendant's personal jurisdiction argument on this waiver ground, in an abundance of caution, Defendant proposes that the Parties exchange initial

1 disclosures no later than fourteen (14) days after the Court's ruling on Defendant's pending
2 motion to dismiss for lack of personal jurisdiction, if this action remains active at that time.
3

4 **VIII. DISCOVERY**

5 The Parties have not taken any discovery to date. The Parties anticipate that, because
6 Bitmain is a foreign corporation based in China, it will require some modifications of the
7 discovery rules, for example, to allow for longer lead times to notice depositions and longer
8 periods to respond to written discovery. In the event the Court denies Defendant's pending
9 motion to dismiss for lack of personal jurisdiction, the scope of Plaintiff's anticipated discovery
10 includes but is not limited to: Defendant's policies and practices with respect to the Alleged
11 Practices. In the event the Court denies Defendant's pending motion to dismiss for lack of
12 personal jurisdiction, the scope of Defendant's anticipated discovery includes but is not limited
13 to: Plaintiff's and putative class members' purchases and use of the ASIC Devices; evidentiary
14 bases for Plaintiff's claims that his and other ASIC devices were "used" when received, that his
15 and other devices mined Bitcoin for Bitmain during the set up process, and Plaintiff's and
16 putative class members' efforts to set up their devices and their accounts on their Bitmain
17 devices; any other bases for Plaintiff's claims in the Amended Complaint; and issues related to
18 class certification (including but not limited to, commonality, typicality, and adequacy).

19 In addition, Plaintiff has requested jurisdictional discovery in the event that the Court
20 determines the facts are insufficient to determine whether it has jurisdiction over Defendant.
21 Defendant's position is that Plaintiff is not entitled to jurisdictional discovery because he has not
22 made any showing whatsoever to warrant jurisdictional discovery, including a specific showing
23 of what facts he hopes to uncover and what reasonable basis he has to believe such facts exist.

24 In the event the Court denies Defendant's pending motion to dismiss for lack of personal
25 jurisdiction, the Parties will negotiate a stipulated protective order that is based on the Northern
26 District model for standard litigation. The Parties propose to submit it for approval within 21
27 days after the Court's ruling on Defendant's pending motion to dismiss for lack of personal
28 jurisdiction, if this action remains on the Court's docket at that time. The Parties agree to set a

1 deadline for the exchange of merits-based experts once there is a ruling on the MFCC and a trial
2 date is set, if the action remains active at that time.

3 **IX. RELATED CASES**

4 The Parties are not presently aware of any related cases or proceedings pending before
5 another judge of this Court, or before another court or administrative agency, that center on the
6 same facts or issues.

7 **X. RELIEF**

8 **A. Plaintiff's Position**

9 Plaintiff seeks reimbursement for, inter alia, injunctive relief, restitution and/or
10 disgorgement. The amount of classwide damages are unknown at his time.

11 **B. Defendant's Position**

12 Defendant does not believe Plaintiff is entitled to any relief sought in the Amended
13 Complaint, including attorneys' fees and costs.

14 **XI. SETTLEMENT AND ADR**

15 Pursuant to Civil Local Rule 16-8 and ADR L.R. 3-5, the Parties have filed a Stipulation
16 and [Proposed] Order Selecting ADR Process. (Dkt. No. 40.)

17 The Parties have selected private mediation as the ADR process for this case, to be
18 completed by no later than one year after the Court's ruling on Defendant's pending motion to
19 dismiss for lack of personal jurisdiction, if the case remains active at that time. (*Id.*)

20 **XII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

21 The Parties do not consent to have a magistrate judge conduct all further proceedings,
22 including trial and entry of judgment.

23 **XIII. OTHER REFERENCES**

24 Defendant believes this case is subject to binding arbitration and reserves its right to move
25 to compel arbitration in the event the Court denies its pending motion to dismiss for lack of
26 personal jurisdiction. Plaintiff will oppose any motion to compel arbitration filed by Defendant.
27

1 The Parties agree this case is not suitable for assignment to a special master, or the Judicial Panel
 2 on Multidistrict Litigation (“JPML”).

3 **XIV. NARROWING OF ISSUES**

4 At this time, the Parties have not identified any issues that are suitable for narrowing by
 5 agreement of the Parties. The Parties note that Plaintiff has already voluntarily dismissed former
 6 named defendant Bitmain, Inc. from the action given that entity’s lack of involvement in the
 7 facts giving rise to this action. Defendant also notes that its pending motion to dismiss for lack
 8 of personal jurisdiction also asks, in the alternative, that the Court dismiss the claims of non-
 9 California putative class members under *Bristol-Myers Squibb Co. v. Superior Court of*
 10 *California*, 137 S. Ct. 1773 (2017). (Dkt. No. 33 at 14-15; Dkt. No. 38 at 10.) Additionally,
 11 Defendant’s position is that, if the Court denies the pending motion to dismiss for lack of
 12 personal jurisdiction, Defendant’s anticipated motion to compel arbitration and/or motion for
 13 judgment on the pleadings will dispose of the case in its entirety, or, in the alternative, narrow
 14 issues that cannot be narrowed by agreement.

15 Plaintiff’s position is that *Bristol-Myers Squibb Co. v. Superior*, 137 S. Ct. 1773 (2017) is
 16 factually inapposite and does not apply to class actions. Accordingly, Defendant’s request to
 17 dismiss the claims of non-California putative class members should be denied. Plaintiff also
 18 takes the position that there is no basis for Defendant’s anticipated motion for judgment on the
 19 pleadings, and that this case is inappropriate for adjudication at the pleadings stage.

20 **XV. EXPEDITED TRIAL PROCEDURE**

21 The Parties do not believe that this case is suitable for handling under the Expedited Trial
 22 Procedure of General Order No. 64 Attachment A.

23 **XVI. SCHEDULING**

24 **A. Plaintiff’s Proposed Schedule**

25 Plaintiff proposes the following case schedule for the Court’s consideration:

EVENT	DEADLINE/DATE

Initial Disclosure exchange	January 2, 2020
Defendant's last day to respond to Plaintiff's Complaint	14 days after ruling on Defendant's Motion to Dismiss for lack of jurisdiction, if the case remains active at that time
Last day to file stipulated proposed protective order	January 9, 2020
Last day to file MFCC	12 months from the order on Defendant's anticipated motion for judgment on the pleadings
Last day to file Opposition	45 days after filing of MFCC
Last day to file Reply	45 days after Opposition is due
Last day for Plaintiff to disclose experts in support of the MFCC	At time Plaintiff's MFCC is filed
Last day for Defendant to disclose experts in opposition to the MFCC	At time Opposition is filed

10 **B. Defendant's Position on Submitting a Proposed Schedule**

11 Defendant's position is that it would be premature to agree to a case schedule until the
 12 Court rules on its pending motion to dismiss for lack of personal jurisdiction. To avoid waiving
 13 its personal jurisdiction challenge, *see Peterson*, 140 F.3d at 1317–18, Defendant proposes that
 14 the Parties submit a proposed case schedule no later than twenty-one (21) days after the Court's
 15 ruling on Defendant's pending motion to dismiss for lack of personal jurisdiction, if the action
 16 remains active at that time.

17 **XVII. TRIAL**

18 Plaintiff has included a jury trial request in his Amended Complaint. The Parties agree that
 19 scheduling a trial at this time is premature. The Parties will submit to the Court the appropriate
 20 duration of trial, and a date by which they will be prepared to take the case to trial, upon a ruling
 21 on Plaintiff's MFCC.

22 **XVIII. DISCLOSURE OF NON-PARTY INTERESTED IDENTITIES OR PERSONS**

23 Plaintiff and Defendant have filed their respective Disclosure of Non-Party Interested
 24 Certification per Civil Local Rule 3-15.

25 **XIX. PROFESSIONAL CONDUCT**

26 All attorneys of record for the Parties have reviewed the Guidelines for Professional
 27 Conduct for the Northern District of California and agree to comply with them.

1 **XX. OTHER MATTERS**

2 No other matters were discussed by the Parties that may facilitate the just, speedy and
3 inexpensive disposition of this matter.

4

5 DATED: December 12, 2019

FRONTIER LAW CENTER

6 By: /s/ Karo G. Karapetyan
7 Karo G. Karapetyan
8 Attorney for Plaintiff
9 Gor Gevorkyan

10 DATED: December 12, 2019

O'MELVENY & MYERS, LLP

11 By: /s/ Carlos M. Lazatin
12 Carlos M. Lazatin
13 Attorney for Defendant
14 Bitmain Technologies, Ltd.

ECF CERTIFICATION

Pursuant to Civil Local Rule 5-1, I, Karo G. Karapetyan, hereby attest that concurrence in the filing of this document has been obtained from all signatories.

DATED: December 12, 2019

FRONTIER LAW CENTER

By: /s/ Karo G. Karapetyan
Karo G. Karapetyan

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

The Hon. James Donato, U.S.D.J.